

No. 11978.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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WILLIAM D. NOLAND, Trustee, and WILLIAM D. NOLAND, Personal,

*Appellants,*

*vs.*

HARRY C. WESTOVER, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division, *et al.*,

*Appellees.*

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Appeal From the District Court of the United States  
for the Southern District of California,  
Central Division

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Reply Brief of Appellants in Opposition and Answer  
to Brief for the Appellees.

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WILLIAM D. NOLAND,  
Trustee,

WILLIAM D. NOLAND,  
Personal,

*In Propria Persona.*

2030 Wilshire Boulevard, Los Angeles 5,

NOV 24 1948



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## Argument.

Counsel for the defendants and appellees, states: "The District Court wrote no opinion," in the brief for appellees.

Appellants contend, that at Los Angeles, California, on or about Tuesday, March 30, 1948, the District Court below, held a hearing and proceeding [Tr. of Rec. pp. 128-189], and on or about April 19, 1948, the District Court below, held another proceeding, wherein the court made a lengthy written statement, which appellants construe and contend is an opinion of the court, due to the fact, that the court made, issued and entered judgments based upon said proceedings and statement [Tr. of Rec.

pp. 189-195], and the summary judgments were issued and entered by the District Court below, on or about April 21, 1948 [Tr. of Rec. pp. 81-85].

Counsel for the defendants states in reply brief to appellants' brief in support of transcript of record, and second amended bill of complaint, that courts of the United States have no jurisdiction to grant declaratory relief, with respect to federal taxes, and cites 28 U. S. C., Sec. 2201 (Appendix A, *infra*), and further cites that the District Court had no jurisdiction as there may be read into the complaint a request for injunction etc., and appellants contend that while counsel has mentioned the second amended complaint, but, that his pleadings in relation to jurisdiction of either the District Court below or the Appellate Court hereof, following his mentioning the second amended complaint, apply to the complaint in case No. 5716-W, before the Honorable Judge Weinberger in the District Court below [Tr. of Rec. pp. 98-115], filed August 28, 1946, and dismissed with judgment entered January 9, 1947 [Tr. of Rec. pp. 10-13].

Appellants contend that the second amended complaint, filed April 19, 1948,, case No. 7315-O'C, in the District Court below [Tr. of Rec. pp. 13-34], has had no hearing before the District Court below, which contention is supported by the record hereof in a proceeding held on April 19, 1948, before said District Court [Tr. of Rec. pp. 189-195], and appellants construe and contend the said proceedings on April 19, 1948, is a written opinion of the District Court below.

Appellants further contend that on this appeal to the above entitled Appellate Court, that a charitable organization [Tr. of Rec. pp. 36-49], or any part, parcel or



interest in same, is not subject to the statutes, points and authorities, such as cited by counsel for the defendants, and further that the second amended bill of complaint, case No. 7315-O'C, in the District Court below, has had no hearing in the said District Court, which appellants contend is the main question before the above Appellate Court, because the said District Court gave an order to amend the bill, and then ruled against the second amended bill of complaint without a hearing before said District Court, and appellants believe that on April 19, 1948, the said District Court held this hearing in the morning [Tr. of Rec. pp. 189-195], and appellants served and filed the second amended bill of complaint in the afternoon of said date, April 19, 1948, therefore, no hearing has been held before the said Court below, on the said second amended bill of complaint, consequently, appellants have been deprived of their day in court.

In the District Court below, case No. 5716-W, was an action against the individual revenue agents for damages against them as individuals, and in the said District Court below, case No. 7315-O'C, was an action against the United States Government through its agencies of the Internal Revenue Service, which said actions were entirely different actions, therefore, a principle of *res adjudicata* could not apply or be used against the afore-said two actions by the appellants hereof, in the said District Court.

Counsel for the defendants claims, the complaint showed no acts by the appellees which could conceivably be wrong; the complaint shows that the Internal Revenue Agent, Norman Hayward, demanded the trustees books and records by threats of jail for the trustees of

the charitable organization, if the said books and records of the said trustees were not given to him, and upon such threats the said Internal Revenue Agent procured the said books and records, and made transfers of assets, funds and property from said charitable organization to the personal account of William D. Noland, an appellant hereof, for the purpose of additional income taxation. Counsel for the defendants has in the brief filed herein, overlooked the fact that the Constitution of the United States, also has some provisions, which provide as follows:

*Boyd v. United States*, 116 U. S. 616;

*Weeks v. United States*, 232 U. S. 392,

and what the court said in both of said cases is set forth on page 30 of the brief filed by appellants in support of record herein.

And the Constitution of the United States further supports federal laws which provide that the aforesaid Internal Revenue Agent Hayward, a defendant, and other Internal Revenue Agents as defendants, and said defendants are appellees hereof, could be wrong and are wrong, as complained against in all complaints in the record hereof, by the appellants hereof, because said Internal Revenue Agents have violated federal laws as follows (United States Code):

Title 18, Chap. 3, U. S. Criminal Code, Sec. 20,

which provides for the prohibition with penalties for depriving citizens of civil rights; and appellants are citizens and surely have been deprived of civil rights.



And whoever, under color or any law, statute, ordinance, regulation or custom, wilfully subjects an inhabitant of any state, territory or district, to the deprivation of any rights, privileges or immunities secured or protected by the Constitution and laws of the United States, \* \* \* shall be fined not more than \$1,000.00 or imprisoned not more than one year or both.

35 Stat. at Large 1092.

And it further provided, that the owner of a right, must be afforded the opportunity to be heard before property is taken where not dangerous to public welfare (the appellants were not afforded that opportunity when the aforesaid Internal Revenue Agents took property, assets and funds from the aforesaid benevolent trust estate, a charitable organization, by threats of jail, and transferred to appellants herein, without appellants' consent, and neither were the appellants afforded that opportunity to be heard, when the second amended complaint had no hearing before the District Court below, when the said District Court made and entered summary judgments of dismissal on April 21, 1948) and courts have provided that the only way to take property is by a lawful hearing before a court:

*Modern Loan Co. v. Pol. Ct.*, 12 Cal. App. 582;

*Moffat v. Hecker*, 68 Cal. App. 35;

*People v. Gen. Motor Accept. Corp.*, 84 Cal. Dec. 41.

And the impairment of contracts may not be accomplished by judicial decisions or by legislative enactments

(and contracts under the provision of the Constitution of the United States are involved in this action):

*Pleasant v. Aetna Life Ins. Co.*, 138 U. S. 67;

*Houston, etc. R. Co. v. Texas*, 177 U. S. 66;

*Wilkes County v. Color*, 180 U. S. 506.

And the general theory of our constitutional form of government upon which our political institutions rest, is that all men have certain inalienable rights—that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to every one, and that in the protection of these rights all are equal before the law:

*Cummings v. Missouri*, 71 U. S. 277,

quoted by McKinney, J., in

*Bearsley v. Cunningham*, 103 S. W. 2d 18, Tenn. 1937.

And Chief Justice John Marshall, of the U. S. Supreme Court, said, in the case of:

*Gibbons v. Ogden*, 9 Wheat. 1 (often quoted direct by courts):

“As men, whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they have said.”

Forfeiture of property or property rights without a trial is not a due process of law procedure, unless provided by contract to such effect:

*Hey Sing Yeck v. Anderson*, 2 Cal. Unrep. 76-78.

In relation to the consideration courts have given the due process of law provision, in the case of *Stuart v. Palmer*, 74 N. Y. 183, an oft quoted case, that court said that the due process of law provisions

“is the most important guaranty of personal rights to be found in the federal or state constitutions. It is a limitation upon arbitrary power, and is a guaranty against arbitrary legislation. No citizen shall arbitrarily be deprived of his life, liberty, or property. This the Legislation cannot do nor authorize to be done.”

Due process of law is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life liberty, or property whether the proceeding be judicial, administrative, or executive in its nature:

*Chicago, M. & St. P. R. Co. v. Bd. of R. Com.*,  
76 Mont. 305,

quoted by Arnold, J., in

*Anderson v. Commercial Credit Co.*, 101 P. 2d  
367, 110 Mont. 333 (1940),

and appellants were denied due process of law, by the aforesaid Internal Revenue Agents taking assets, funds and property from the aforesaid benevolent trust estate, a charitable organization, and charging same to the personal account of appellant William D. Noland personally, and further denied due process of law, by the District Court below making and entering summary judgments against appellants without any hearing on the second amended bill of complaint.

### Conclusion.

Wherefore, appellants further pray that the judgments of the District Court below be reversed and that the second amended bill of complaint be remanded and sent back to the said District Court below for further proceedings subject to prayer of said complaint.

Dated: Los Angeles, California, November 15, 1948.

Respectfully submitted,

WILLIAM D. NOLAND,  
Trustee,

WILLIAM D. NOLAND,  
Personal,

*In Propria Persona.*